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In The Supreme Court of the United States

MICHAEL S. HUTZLER,

Petitioner,

v.

STATE OF WEST VIRGINIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Appeals of West Virginia

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does jeopardy attach to felony charges that are dismissed pursuant to a plea agreement with the state after an accused has waived the preliminary hearing and pled guilty to misdemeanor charges in a magistrate court in exchange for the state's dismissal of the felony charges, so as to preclude a different county of the state from re-prosecuting the accused on the felony charges?

2. Does the Due Process Clause of the Fourteenth Amendment require that the prosecuting attorney's office of one county of a state honor the plea agreement agreeing to dismiss felony charges bargained for by a different county of that state?

TABLE OF CONTENTS

Questions Presented..... i

Table of Contents..... ii

Table of Authorities..... iv

Opinion Below..... 2

Jurisdictional Grounds..... 2

Constitutional and Statutory Provisions..... 3

Statement of the Case..... 4

Reasons for Granting the Writ..... 14

Conclusion..... 26

APPENDIX

Appendix A - Jefferson County WV Magistrate Court Disposition Page for charges of burglary, grand larceny, destruction of property, possession of cocaine and false information

Appendix B - Jefferson County WV Magistrate Court Form Motion to Nolle Prosequi(Dismiss)

Appendix C · Jefferson County WV Magistrate Court Form Guilty or No Contest Plea

Appendix D · Order of Restitution

Appendix E · Jefferson County WV Probation Order

Appendix F · Jefferson County WV Probation Discharge Order

Appendix G · Affidavit of Harley O. Wagner, Esquire

Appendix H · Affidavit of Petitioner

Appendix I · Order of WV Supreme Court of Appeals

Appendix J · Opinion of WV Supreme Court of Appeals

TABLE OF AUTHORITIES

Cases

Austin v. State, 49 Wis.2d 727 (1971)..... 19

Com. v. Ahearn, 670 A.2d 133 (Pa. 1996)..... 22

Com. v. Diaz, 383 A.2d 852 (Pa. 1978)..... 16,21

Com. v. Diaz, 340 A.2d 559 (Pa. Super. 1975), *overruled by Com. v. Diaz*, 383 A.2d 852 (Pa. 1978)..... 16, 20,21

Mallon v. State, 49 Wis.2d 185 (1970)..... 19

Nelson v. State, 53 Wis.2d 769 (1972)..... 19, 23

Rush v. State, 749 So.2d 1024 (Miss. 1999)..... 16, 22

Santobello v. New York, 404 U.S. 257 (1971)..... 16, 19, 23-25

State v. Bond, 139 Wis.2d 179 (Ct. App.1987)..... 19

State v. Comstock, 485 N.W.2d 354 (Wis. 1992)..... 16,19, 23

State v. Comstock, 471 N.W.2d 596 (Wis. App. 1991), *overruled by State v. Comstock*, 485 N.W.2d 354 (Wis.1992)..... 16-18

United States v. Mintz, 16 F.3d 1101 (10th Cir. 1994)..... 16, 23-24

Constitutional Provisions, Statutes and Rules

U.S. Const. amend. V..... 3, 11

U.S. Const. amend. XIV..... 3

W. Va. Const., Art. 8, § 10..... 3,4

W. Va. Code, § 50-2-10..... 3,4

U.S. Sup. Ct. R.10..... 14

PETITION FOR WRIT OF CERTIORARI FROM THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Appeals of West Virginia

OPINION BELOW

The opinion of the Supreme Court of Appeals of West Virginia, for which review is sought, is *State of West Virginia v. Michael S. Hutzler*, No. 34158. The appeal was from the Circuit Court of Berkeley County, West Virginia, Criminal Action No. 07-F-69.

JURISDICTIONAL GROUNDS

Judgment was rendered in the Supreme Court of Appeals of West Virginia on June 15, 2009 . The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the question of whether the Supreme Court of Appeals of West Virginia's interpretation of West Virginia constitutional and statutory provisions violates the Double Jeopardy Clause of the Fifth Amendment of the United States Constitution and the Privileges and Immunities Clause and Due Process Clause of the Fourteenth Amendment of the United States Constitution.

The Double Jeopardy Clause of the Fifth Amendment of the United States Constitution provides that "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb...." U.S. Const. amend. V.

The Fourteenth Amendment of the United States Constitution provides, in relevant part, that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law...." U.S. Const. amend. XIV.

The West Virginia statutory and constitutional provisions that Petitioner contends the Supreme Court of Appeals of West Virginia interpreted in a way that conflicts with the United States Constitution, other state courts of last resort, United States court of appeals, and relevant decisions of this Court are Article 8, Section 10 of the West Virginia Constitution and Chapter 50, Article 2, Section 3 of the West Virginia Code.

Article 8, Section 10 of the West Virginia Constitution provides, in relevant part,

> The jurisdiction of a magistrate court shall extend throughout the county for which it is established, shall be uniform for all counties of the State and shall be subject to such regulations as to venue of actions... as may be prescribed by law....
>
> Magistrate courts shall have such original jurisdiction in criminal matters as may be prescribed by law, but no person shall be convicted or sentenced for a felony in such courts.

W. Va. Const., Art. 8, § 10.

Chapter 50, Article 2, Section 10 of the West Virginia Code provides, in relevant part, "In addition to jurisdiction granted elsewhere to magistrate courts, magistrate courts shall have jurisdiction of all misdemeanor offenses committed in the county and to conduct preliminary examinations on warrants charging felonies committed within the county...." W. Va. Code, § 50-2-10.

STATEMENT OF THE CASE

On October 16, 2005, Trooper M.J. Glende charged Petitioner Michael S. Hutzler in the Jefferson County Magistrate Court with the following offenses: Burglary, 05-F-432; Grand Larceny, 05-F-433; Domestic Assault, 05-M-3503;

Assault, 05-M-3504; Possession of Cocaine, 05-M-3505; False Information to West Virginia State Police, 05-M-3506; and Destruction of Property, 05-M-3507. These charges arose out of an incident that was alleged to have occurred on October 16, 2005 in Jefferson County, West Virginia.

On April 4, 2006, a preliminary hearing was held on the aforementioned charges in the Magistrate Court of Jefferson County, West Virginia before the Honorable William E. Senseney, Magistrate. Defendant was present and represented by counsel, Harley O. Wagner of Mills & Wagner, PLLC. The State was represented by Steve Groh, Jefferson County Assistant Prosecuting Attorney. Trooper M.J. Glende and the alleged victim, Sharla K. Hollida were also present.

On April 4, 2006, after extensive plea negotiations, the parties entered into an agreement to resolve all charges against Mr. Hutzler. Mr. Hutzler pled guilty pursuant to the plea agreement. The Assistant Prosecuting Attorney, the alleged victim, and the arresting officer, Trooper Glende were all in agreement with the final disposition.

The final plea agreement was as follows:

- Defendant pled guilty to the misdemeanor offenses of Domestic Assault, 05-M-3503, and Assault, 05-M-3504.

- Defendant was sentenced to six months imprisonment on each charge, with

each sentence running consecutively and suspended in lieu of six months unsupervised probation per charge for a total of one year unsupervised probation.

- Standard terms and conditions of probation applied with the additional provisions of $5,000 restitution to the victim, Sharla K. Hollida to be paid within 90 days and no contact with either the alleged victim, Sharla K. Hollida or her boyfriend, Clyde Campbell.

- The remaining charges, Burglary, 05-F-432; Grand Larceny, 05-F-433; and Destruction of Property, 05-M-3507; Possession of Cocaine, 05-M-3505; and False Information, 05-M-3506, were agreed to be dismissed. The dismissal was understood by the Petitioner to be with prejudice.

Pursuant to the plea agreement reached in the Magistrate Court of Jefferson County, West Virginia, the remaining charges were dismissed by Assistant Prosecuting Attorney Steve Groh. On the disposition sheets of the remaining charges, including Burglary, Grand Larceny, and Destruction of Property, a notation was included that the charges were "dismissed per plea." Furthermore, the Motion to Dismiss filed by the State and signed by Assistant Prosecuting Attorney Steve Groh and the alleged

victim contained reference to all of the charges with the notation "per plea."

On March 28, 2007, the parties appeared in the Magistrate Court of Jefferson County, West Virginia before Honorable William E. Senseney on the above referenced plea agreement for a status hearing on Mr. Hutzler's probation. Defendant appeared in person and by counsel, Harley O. Wagner. The State was represented by Larry Crofford, Assistant Prosecuting Attorney. At this hearing, the Magistrate Court discharged Mr. Hutzler from probation due to his successful completion of the terms and conditions of probation as set forth in the plea agreement. The Probation Discharge Order stated that:

> the Court finds that the Defendant has complied with all the terms of his probation and all conditions set forth at the hearing in this matter on April 4, 2006 wherein the Defendant, per plea agreement with the State of West Virginia, pled guilty to domestic assault (05-M-3503) and assault (05-M-3504) and the charges of burglary (05-F-432), grand larceny (05-F-433), possession (05-M-3505), false information (05-M-3506), and destruction of property (05-M-3507) *were dismissed, per said plea with the State.*

Probation Discharge Order (emphasis added).

The Magistrate Court further noted that the Petitioner had paid full restitution to Sharla K. Holliday in the amount of $5,000 and that the

Petitioner had not had any further contact with either the alleged victim or her boyfriend. The restitution amount was based upon the monetary value of the victim's property that was allegedly stolen or destroyed by the Petitioner, with the net value being close to $5,000.

To all parties involved, including Mr. Hutzler, the matter involving this incident appeared to be concluded and the case closed.

However, in February 2007, Berkeley County Prosecuting Attorney Pamela Jean Games-Neely presented the Berkeley County Grand Jury with a three count indictment against Michael S. Hutzler, charging Burglary, Grand Larceny, and Destruction of Property. The Berkeley County Grand Jury returned an indictment against the Petitioner for the aforementioned charges under Berkeley County Circuit Court Case No. 07-F-69. It is undisputed that this indictment arose out of the same identical fact and circumstances that gave rise to the charges and the plea agreement that Petitioner had previously entered into and resolved in the Magistrate Court of Jefferson County, West Virginia.

At arraignment on March 5, 2007, Mr. Hutzler entered a plea of not guilty to the indictment. On March 20, 2007, defense counsel Betsy K. Giggenbach met with Assistant Prosecuting Attorney Greg Jones for a discovery conference and plea negotiations. The parties discussed all of the facts and circumstances surrounding the original Jefferson County case as well as the pending

Berkeley County case. Defense counsel shared with the Assistant Prosecuting Attorney copies of the Jefferson County Case Disposition sheets for the offenses of Grand Larceny, Burglary, Possession of Cocaine, False Information, Destruction of Property, Domestic Assault, and Assault wherein it was noted that said charges were "dismissed per plea." The Assistant Prosecuting Attorney stated to defense counsel that "the defendant deserves to be punished for the crime he committed and that he must plead guilty to a felony offense because what do I have to lose by going to trial- I have your client's confession." Accordingly, the parties were unable to reach a mutual resolution of the case.

On June 1, 2007, Mr. Hutzler filed a motion to dismiss the indictment. Attached to the motion were affidavits from Petitioner Hutzler and Mr. Hutzler's counsel, Harley O. Wagner. In the affidavits, both swore that they believed that the original charges of Burglary, Grand Larceny, and Destruction of Property had been dismissed with prejudice pursuant to the plea agreement.

On June 4, 2007, at a pre-trial hearing, the State placed on the record that Trooper M.J. Glende had destroyed blood evidence taken from the car and the house because he believed that the entire case had been resolved. Trooper Glende had disposed of the samples shortly following the April 4, 2006 plea hearing before the Jefferson County Magistrate

Court.[1]

On June 20, 2007, the State filed its response to the motion to dismiss the indictment. The State countered that Jefferson County never had jurisdiction over the Burglary, Grand Larceny, and Destruction of Property charges and that the charges were dismissed because of lack of jurisdiction, rather than pursuant to the plea agreement. Attached to the filing was an affidavit from the Assistant Prosecuting Attorney of Jefferson County, Steve Groh. Mr. Groh swore that he had only learned that Jefferson County lacked jurisdiction on the day of the plea hearing, April 4, 2006 and that he had informed the Petitioner and his counsel that the charges were being dismissed because of lack of jurisdiction.

On August 2, 2007, a hearing on the pre-trial motions was held before the Honorable Gray Silver, III, in the Circuit Court of Berkeley County, West Virginia. The Circuit Court denied, *inter alia,* the Petitioner's motion to dismiss based on a violation of

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[1] Both the motion to dismiss the indictment and the appeal to the Supreme Court of Appeals of West Virginia argued that the indictment should have been dismissed due to the State's failure to preserve evidence. The Berkeley County Circuit Court and the Supreme Court of Appeals denied this argument. Petitioner does not seek review of this ruling, but suggests that the fact that the officer destroyed critical evidence because he believed the case had been finally decided is substantial evidence that the other charges were dismissed with prejudice pursuant to the plea agreement.

Article III, Section 5 of the United States and the Fifth Amendment of the United States Constitution. The Circuit Court found that the Burglary, Grand Larceny, and Destruction of Property charges all occurred solely in Berkeley County, and, thus, Jefferson County never had jurisdiction of these charges. Thus, because Jefferson County lacked jurisdiction, the court found that Mr. Hutzler had never originally been placed in jeopardy on these charges. Furthermore, the court found that the charges had not been dismissed pursuant to a plea agreement, adopting the Affidavit from the Jefferson County Assistant Prosecuting Attorney and ignoring the affidavit from Petitioner, the affidavit from Petitioner's counsel, and the myriad of other evidence from official court documents that the charges were dismissed pursuant to a plea bargain whereby Petitioner agreed to plead guilty to the two misdemeanors in exchange for dismissal of the more serious charges.

On or about August 28, 2007, Michael S. Hutzler entered into a conditional plea agreement with the State, whereby he pled guilty to Felony Destruction of Property. The plea agreement called for suspension of a jail sentence in lieu of 3 years probation. Pursuant to the plea agreement, Petitioner reserved his right to appeal the ruling on his motion to dismiss the indictment.

After timely filing a petition for appeal to the Supreme Court of Appeals of West Virginia, the court granted Mr. Hutzler's petition for appeal. In his brief, Mr. Hutzler argued, *inter alia*, that the

Jefferson County court had jurisdiction to accept the plea agreement whereby Mr. Hutzler pled guilty to two misdemeanors in exchange for a dismissal of each of the more serious charges, that evidence demonstrated beyond cavil that the more serious felony charges were dismissed pursuant to a properly entered plea agreement with the State, that the State was prohibited by principles of double jeopardy of prosecuting Mr. Hutzler on charges that had been dismissed pursuant to a plea agreement, and that it was fundamentally unfair to allow the State to circumvent the burden of its plea bargain by prosecuting the more serious charges. Mr. Hutzler argued,

> To now allow the State a second bite of the apple is fundamentally unfair. It allows the State to circumvent the original bargain that it entered with Mr. Hutzler by gaining the convictions from the plea agreement, and further being able to seek convictions on the dismissed charges.... It... would... be fundamentally unfair to allow the State to circumvent the burden of its bargain based upon a venue objection, as venue is waived once Mr. Hutzler pled guilty.

Appellant's Brief at 12.

In its response brief, the State responded, in relevant part, that the felony charges had not been dismissed pursuant to a plea agreement, but instead were dismissed because the Assistant Prosecuting Attorney learned that jurisdiction was improper in Jefferson County. Further, the State argued that

Jefferson County was the improper venue for the charges and therefore the Jefferson County court could not accept a plea agreement which negotiated dismissal of those charges.

After hearing oral argument on the issues, the Supreme Court of Appeals of West Virginia affirmed Petitioner's conviction, finding that "the Magistrate Court of Jefferson County clearly did not have jurisdiction of the burglary and grand larceny offenses because these offenses are felonies. Because the magistrate court did not have jurisdiction of these felony offenses, the appellant was never in jeopardy for these offenses in the Magistrate Court of Jefferson County." Order Affirming Conviction at 10-11. The issue of 'magistrate versus circuit court jurisdiction' was never addressed by the parties nor queried by the justices at oral argument. The court opined that because "the magistrate court did not have jurisdiction" of the felony offenses "we do not find it necessary to address [appellant's] specific arguments" of whether "the circuit court confused the issues of venue and jurisdiction in rendering its decision" and whether "the circuit court clearly erred in making the factual determination, based on the evidence, that the offenses of burglary, grand larceny, and destruction of property were dismissed for lack of jurisdiction instead of per the plea agreement in the Magistrate Court of Jefferson County." Order Affirming Conviction at 13 n.7.

Petitioner respectfully seeks an order granting certiorari to review this final decision of the Supreme Court of Appeals of West Virginia.

REASONS FOR GRANTING THE WRIT

I. COMPELLING REASONS RECOGNIZED BY THIS COURT

Rule 10 of the Rules of the Supreme Court of the United States provides that "[a] petition for a writ of certiorari will be granted only for compelling reasons," and in part lists the following non-exclusive reasons that the Court will consider:

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals.
>
> [c] a state court... has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

U.S. Sup Ct. R. 10(b) - [c].

In the instant case, the Supreme Court of Appeals of West Virginia, the West Virginia court of last resort, held that the United States Constitution did not preclude one county of West Virginia, Berkeley County, of prosecuting felony charges that had been previously dismissed pursuant to a plea agreement with the State in another county of West Virginia, Jefferson County. The Supreme Court of Appeals of West Virginia erroneous reasoning was

that the Magistrate Court of Jefferson County did not have jurisdiction to convict or sentence a defendant for a felony offense and therefore, the State was not prohibited from re-prosecuting the felony charges that had been dismissed pursuant to a plea agreement in the Magistrate Court of Jefferson County in exchange for the entering of a guilty plea to two misdemeanor offenses.[2]

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[2] The Supreme Court of Appeals of West Virginia never reached the issue of whether the felony charges were dismissed pursuant to a plea agreement because it decided that the Magistrate court not having jurisdiction to convict and sentence on felony offenses was controlling. Petitioner asserts that such an issue, which was neither briefed by the Petitioner nor the State was not controlling, but rather that the court had to decide whether the charges were dismissed pursuant to a plea agreement in order to determine the effect that such a dismissal had upon the State's ability to re-prosecute those charges. Petitioner suggests, however, that it is clear beyond peradventure that the felony charges were dismissed pursuant to a plea agreement with the Prosecuting Attorney's Office of Jefferson County, as evidence through the affidavit of Petitioner Michael Hutzler, the affidavit of his attorney Harley Wagner, the disposition sheet of the felony charges that contained a notation "dismissed per plea," the State's motion to nolle pros the felony charges that did not state the charges were dismissed for lack of jurisdiction, the magistrate's handwritten notation of "per plea" on the motion to dismiss the felony charges, the fact that the chief investigating officer had destroyed crucial evidence of the felony charges after the plea hearing because he believed that the charges had been finally adjudicated, the probation officer signed by the State that stated that the felony charges were dismissed with prejudice pursuant to the plea agreement, and the restitution of $5,000 that was ordered and Petitioner paid for the loss caused by his conduct underlying the felony charges.

This ruling of the Supreme Court of Appeals of West Virginia that permits the State to re-prosecute charges dismissed pursuant to a valid plea agreement conflicts with decisions of the Pennsylvania, Wisconsin, and Mississippi state courts of last resort, with a decision of the United States Court of Appeals for the Tenth Circuit, and with decisions of this Court. *See Com. v. Diaz*, 383 A.2d 852 (Pa. 1978), *overruling Com. v. Diaz*, 340 A.2d 559 (Pa. Super. 1975); *State v. Comstock*, 485 N.W.2d 354 (Wis. 1992), *overruling State v. Comstock*, 471 N.W.2d 596 (Wis. App. 1991); *Rush v. State*, 749 So.2d 1024 (Miss. 1999); *United States v. Mintz*, 16 F.3d 1101 (10th Cir. 1994); *Santobello v. New York*, 404 U.S. 257 (1971).

II. THE SUPREME COURT OF APPEALS OF WEST VIRGINIA'S DECISION INTERPRETING THE DOUBLE JEOPARDY AND DUE PROCESS CLAUSES EFFECT ON CHARGES DISMISSED PURSUANT TO A PLEA AGREEMENT IN A MAGISTRATE COURT CONFLICT WITH DECISIONS OF OTHER STATE COURTS OF LAST RESORT

A. The Supreme Court of Wisconsin

In *State v. Comstock*, 485 N.W.2d 354 (Wis. 1992), the Supreme Court of Wisconsin overruled the appellate court of appeals decision, *State v. Comstock*, 471 N.W.2d 596 (Wis. App. 1991), which held that "[j]eopardy did not attach to charges of second-degree sexual assault which were dismissed

pursuant to plea agreement because" the "charges are dismissed before commencement of trial." *State v. Comstock*, 471 N.W.2d 596 (Wis. App. 1991), *overruled* by *State v. Comstock*, 485 N.W.2d 354 (Wis. 1992). The Wisconsin Supreme Court ruled that "[t]he state, the defendant, and the court of appeals agree that this court has held that jeopardy attaches when a circuit court accepts an accused's plea of guilty." *Comstock*, 485 N.W.2d at 362-63. The court held that jeopardy attached to the counts that were pled to before the circuit court, but also attached to "counts 3 and 4 which the prosecutor moved to dismiss and which the circuit court dismissed when accepting the defendant's no contest plea to amended counts 1 and 2." *Id.* at 367.

"The state argue[d] that double jeopardy does not bar the reinstatement of these counts because jeopardy never attached. The state assert[ed] that the defendant has never pleaded guilty to these counts and has never been acquitted or convicted of or punished for the commission of these two felony charges." *Id.* The court found that the cases cited by the State were inapposite because they "did not involve a dismissal with prejudice or a dismissal of some charges upon a guilty plea to other specified charges pursuant to a plea agreement" and did not involve "a defendant plead[ing] guilty with the assurance that the felony charges would be dismissed on the merits [when] his plea agreement was accepted." *Id.* at 367-68. The court held that "[i]n this case the court is concerned about potential prosecutorial abuse and the defendant's interest in finality is implicated.." *Id.* at 368.

> In this case, unlike in the cases the state cites, the two felony charges were dismissed *with prejudice* upon the state's motion. This case involves a plea agreement in which the defendant pleaded guilty to two reduced charges in return for the dismissal of two felony charges. The circuit court dismissed the charges upon the prosecutor's express agreement that the prosecutor would not bring charges for any other incidents between the defendant and the victim or the victim's sister. The state has not asked that the plea agreement be vacated and the defendant has complied with the plea agreement and the circuit court's order by cooperating in the presentence investigation.

Id. at 368. Therefore, the Wisconsin Supreme Court "conclude[d] that allowing the state to reinstate the two felony charges dismissed with prejudice in this case would amount to allowing the state to make repeated attempts to convict an individual for the same offense. Allowing the state to reinstate the two felony charges in contravention of a plea agreement with which the defendant has complied violates the principles of finality and fairness underlying the double jeopardy clause."

The Wisconsin Supreme Court found further support in this holding in the due process clause, that prohibits the re-prosecution on dismissed charges "when the prosecutor on behalf of the sovereign state has contracted with an accused to dismiss charges and the court has dismissed the

charges." *Id.* "[A] 'subsequent reprosecution of a charge dismissed as a result of a plea bargain is barred by elementary due process.'" *Id.* (quoting *Nelson v. State*, 53 Wis.2d 769, 775, (1972) and citing *Austin v. State*, 49 Wis.2d 727, 734-36 (1971); *Mallon v. State*, 49 Wis.2d 185, 189-90 (1970); *State v. Bond*, 139 Wis.2d 179, 187-88 (Ct. App.1987); *Santobello v. New York*, 404 U.S. 257, 262 (1971)). "We thus have concluded that principles of fairness, finality and repose prohibit the prosecutor from reprosecuting charges that a court dismissed as a result of a plea agreement. If the prosecutor is bound by a valid plea agreement, and due process protects the defendant from the prosecutor's withdrawing from the agreement, we do not believe that considerations of double jeopardy and due process permit a circuit court to *sua sponte* relieve the prosecutor from a valid plea agreement." *Comstock*, 485 N.W.2d at 368. "When the December 11 proceeding ended, the defendant had every reason to believe that pursuant to the plea agreement the four felony charges were terminated and that his convictions of the misdemeanors were final. Acting on this belief the defendant cooperated in the presentence investigation." *Id.*

"We conclude that the state cites no case supporting its position that the two felony charges dismissed with prejudice under the circumstances of this case may be reinstated. In this case, fundamental fairness-whether derived from the double jeopardy or due process clause-prohibits the prosecutor from reprosecuting the dismissed counts (counts 3 and 4 of the original information)." *Id.* at 368-69. "The proper operation of the criminal justice system

depends on the district attorney's office exercising its prosecutorial discretion in a sound manner and on the circuit courts' exercising their powers in the public interest. The circuit court is not a party to a plea agreement, need not agree to reduce the charges upon the prosecutor's motion, and need not accept the prosecutor's or defense's sentencing recommendations." *Id.* at 369.

B. **The Supreme Court of Pennsylvania**

In *Commonwealth v. Diaz*, 383 A.2d 852 (Pa. 1978), the Supreme Court of Pennsylvania overruled the superior court's ruling in *Com. v. Diaz*, 340 A.2d 559 (Pa. Super. 1975) and found that the "[t]rial court had subject matter jurisdiction and defendant was placed in jeopardy, when he pleaded guilty in conjunction with plea bargain and was sentenced for crime of which he was accused, even though there was no indictment.

The Supreme Court of Pennsylvania described the following factual situation:

> On April 13, 1974, the defendant... was arrested and charged with Attempted Rape, Kidnapping, Indecent Assault and Simple Assault. On April 18, 1974, the defendant appeared before Judge Thomas N. Shiomos. The defendant knowingly and intelligently waived the preliminary hearing, presentment to the Grand Jury and indictment, and entered a plea of guilty on the Municipal Court transcript to the charge of Attempted Rape. In return for the guilty plea, the

> Commonwealth moved to nolle prosse the remaining charges. Thereupon, Judge Shiomos, sitting as a Judge of the Court of Common Pleas, accepted the guilty plea and sentence the defendant to five years probation.

Diaz, 383 A.2d at 853. "On April 22, 1974, appellant was rearrested for the same charges." *Id.* He moved to dismiss on double jeopardy and the trial court denied the motion. *Id.* at 853-54.

> The court found,
>
> The prosecution also contends in its brief that the trial court did not have subject matter jurisdiction because a common pleas judge sitting in municipal court as a committing magistrate has no jurisdiction to accept a plea of guilty to the charge of attempted rape. The argument is frivolous; at the time the guilty plea was accepted, appellant had waived the preliminary hearing. That phase of the prosecution was therefore over. Both the defense and the prosecution agreed at that time that the trial judge should proceed to conduct a hearing for the purposes of accepting appellant's guilty plea. The trial judge was a judge of the Court of Common Pleas which has subject matter over the crimes involved. Under these circumstances it cannot be said that a preliminary hearing was taking place, and that the trial judge was sitting as a committing magistrate rather than, by consent of all parties, as a judge of the Court of Common Pleas.

Id. at 855. "[Although under some circumstances a nolle pros may be removed, the prosecution's participation in the plea agreement here forecloses such removal.... Once it is established that the tribunal had both subject matter jurisdiction and jurisdiction of the person of the accused, jeopardy attached. The appellant's motion to dismiss the indictments should have been granted." *Id.* (citation omitted).

In *Commonwealth v. Ahearn*, 670 A.2d 133, 136 (Pa. 1996), the Supreme Court of Pennsylvania reaffirmed its holding in *Diaz* "that under those circumstances, the plea agreement foreclosed the lifting of the nolle pros since the nolle pros was a quid pro quo part of the plea bargain and that appellant was placed in jeopardy when he pleaded guilty in conjunction with the plea bargain and the sentence for the crime for which he was accused."

C. **The Supreme Court of Mississippi**

The Supreme Court of Mississippi has also issued a decision that conflicts with the opinion of the Supreme Court of Appeals of West Virginia. In *Rush v. State*, 749 So.2d 1024 (Miss. 1999),

> Rush contend[ed] that the prosecution in Lowndes County of charges already disposed of in another county violates the double jeopardy clause. If Rush pleaded guilty to one charge in Monroe County in exchange for dropping of other charges in Lowndes County pursuant to a valid plea bargain and the charge pled to is in fact identical, resolution of

> the case at bar is a simple matter,– the subsequent prosecution in Lowndes County would clearly be barred by double jeopardy. If a plea bargain allows a defendant facing multiple charges to plead to one charge in exchange for having the other charges dismissed or remanded, the remanded charges are barred from further prosecution.

Id. at 1027 (citing *Santobello*, 404 U.S. at 262; *Comstock*, 485 N.W.2d at 367; *Nelson*, 193 N.W.2d 702).

III. THE SUPREME COURT OF APPEALS OF WEST VIRGINIA'S DECISION INTERPRETING THE DOUBLE JEOPARDY AND DUE PROCESS CLAUSES EFFECT ON CHARGES DISMISSED PURSUANT TO A PLEA AGREEMENT IN A MAGISTRATE COURT CONFLICT WITH DECISIONS OF UNITED STATES COURTS OF APPEAL

The Tenth Circuit has also issued a decision that conflicts with the opinion of the Supreme Court of Appeals of West Virginia. In *United States v. Mintz*, 16 F.3d 1101 (10th Cir. 1994), the Tenth Circuit held that jeopardy attached when a federal conspiracy charge in the Florida district court was dismissed with prejudice. The court found "that the district court did not err in dismissing Count 1 because the evidence supports a finding of one conspiracy. Since Defendants were indicted for the same conspiracy in Florida and this charge was

dismissed with prejudice, to subject Defendants to a trial on the same charge in Kansas would violate the Double Jeopardy Clause of the Constitution." *Id.* at 1106.

IV. THE SUPREME COURT OF APPEALS OF WEST VIRGINIA'S DECISION INTERPRETING THE DOUBLE JEOPARDY AND DUE PROCESS CLAUSES EFFECT ON CHARGES DISMISSED PURSUANT TO A PLEA AGREEMENT IN A MAGISTRATE COURT CONFLICT WITH DECISIONS OF THIS COURT

While this Court has never directly addressed the issue of whether double jeopardy considerations prohibit a state from re-prosecuting charges that were dismissed as a quid pro quo for pleading to lesser charges pursuant to a plea agreement, this Court has found that due process principles dictate that a state should not be allowed to break its plea bargain and re-prosecute charges that were agreed to be dismissed. *See, e.g., Santobello*, 404 U.S. at 261-63. "Disposition of charges after plea discussion is not only an essential part of the process but a highly desirable part for many reasons. It leads to prompt and largely final disposition of most criminal cases...." *Id.* at 261. "This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a

promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled." *Id.* at 262. "On this record, petitioner 'bargained' and negotiated for a particular plea in order to secure a dismissal of more serious charges [and] also on condition that no sentence recommendation would be made by the prosecutor." *Id.* Where the prosecutor made a sentencing recommendation, this Court "conclud[ed] that the interests of justice and appropriate recognition of the duties of the prosecution in relation to promises made in the negotiation of pleas of guilty will be best served by remanding the case to the state court for further consideration." *Id.* at 262-63.

Petitioner suggests that the instant question concerning the constitutional protection afforded a defendant for charges that were dismissed pursuant to a plea agreement is substantial and compelling. A decision on the constitutional protections in such a situation is imperative due to the linchpin nature of plea bargaining in the criminal justice system. Depending upon the source of information, approximately ninety percent of criminal cases nationwide do not go to trial, but are finally disposed by the plea bargaining process. If a criminal defendant cannot be ensured that the prosecution will not be allowed to re-prosecute dismissed charges, the criminal defendant will be less likely to enter into plea agreements that cannot be enforced. Especially troublesome is that criminal dispositions that are worked out prior to grand jury indictment and docketing in the circuit courts ensures the

efficient administration of the courts. Without a guarantee that such plea agreements will be enforceable against the state, criminal defendants and their attorneys will no longer engage in pre-indictment negotiations, but instead will put states (and the courts) through extraordinary burden of indicting every case in which an arrest is made to ensure that double jeopardy principles will prevent the state from reneging on the burden of its bargain not to re-prosecute charges dismissed pursuant to a plea.

Therefore, Petitioner asserts that the Supreme Court of Appeals of West Virginia's decision that a magistrate court does not have jurisdiction of felonies and therefore any felony dismissed pursuant to a plea agreement in a magistrate court where the defendant pleads to a misdemeanor offense is not precluded from being re-prosecuted by the state is in four square opposition to the decisions of other state courts of last resort, other courts of appeal, this Court, and sound public policy.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that this Court grant his petition for writ of certiorari and vacate the opinion of the Supreme Court of Appeals of West Virginia.

Respectfully Submitted,

MICHAEL S. HUTZLER, PETITIONER
By Counsel

Kevin D. Mills
Counsel for Petitioner
MILLS & WAGNER, PLLC
1800 West King Street
Martinsburg, West Virginia 25401
(304) 262-9300

No. _____

In The Supreme Court of the United States

MICHAEL S. HUTZLER,

Petitioner,

v.

STATE OF WEST VIRGINIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Appeals of West Virginia

APPENDIX

Kevin D. Mills
MILLS & WAGNER, PLLC
1800 West King Street
Martinsburg, WV 25401
(304) 262-9300

Counsel of Record for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

A

IN THE MAGISTRATE COURT OF JEFFERSON COUNTY, WEST VIRGINIA

Criminal
Case History

Case Number

05-F-432 - Burglary
WV Code 61-3-11(A)

05-F-433 - Grand Larceny
WV Code 61-3-13(A)

05-M-3505 - Possession of Cocaine
WV Code 60A-4-401(c))

05-M-3506- False Info to WVSP
WV Code 15-2-16

05-M-3507 - Destruction of Property
WV Code 61-3-30

MICHAEL SCOTT
HUTZLER
P.O. BOX 2204
MARTINSBURG, WV 25402
304-671-0200
DL #:
DOB: 04/09/66
SSN: 233-17-4421
Offense Date: 10/16/2005
Complainant name: GLENDE, WVSP
Issuing Mag.: RISSLER
Assigned Mag.: Senseney

BOND INFORMATION
Bond set at: 7,500.00

Bond received from: Vannoy
Type: PB
Date:
Rec.#:
Date pauper's affidavit filed:_____
Notes/comments: 11/21/05 Called Capias back (faxed)

FISCAL DATA

F $_____
Court costs $_____
Arrest fee $_____
RJA fee $_____
LET fee $_____
CVC fee $_____
Worthless check notice
$_____
Other $_____
Total due

FIRST APPEARANCE/PLEAS

Arrest date: 10/16/2005
Arraignment (plea) date: 10/16/2005
Re-arrest date:
Date committed: 10/16/2005
Defendant status ❑ Pro Se ❑ Counsel
❑ Jury Trial Waived
❑ Defendant failed to appear by summons or notice
Plea: ❑ Not guilty ❑ No contest ❑ Guilty
Date released: 10/16/05

Hearing Dates
Def. P.T. motions filed:
Pros. P.T. motions filed:
Jury trial?:
Pre-trial conf.: Time:
Original trial: Time:

Prelim. Hearing: Time:

Continuances

By:	To:	Time:
By:	To:	Time:
By:	To:	Time:
By:	To:	Time:
By:	To:	Time:

Preliminary Hearing

Defendant status: ❑ Pro se ❑ Counsel

Preliminary hearing date:

❑ Waiver of preliminary ❑ Probable cause found, bound over to Circuit Court

Date to Cir. Ct.:

❑ No probable cause found, defendant and bond discharged ❑ bond disbursed to: ❑ Cir. Ct. ❑ Defendant ❑ Surety ❑ Other

❑ Other

Disposition Activity and Judgment Order

Pre-trial dismissal date:

Verdict or plea date:

Trial: ❑ Bench ❑ Jury ❑ Mistrial

Verdict or Plea:

Guilty to Domestic Assault

$5,000.00 restitution

Costs & Fees: 153.50

Jail Term: 6 mo suspended; 1 yr prob.

So ordered and entered this 4 day of 4 2006 by

/s/_____

William E. Senseney

Guilty to Assault

$5,000.00 restitution

Costs & Fees: 153.50

Jail Term: 6 mo. Susp, 1 yr prob.

So ordered and entered this 4 day of 4 2006 by

/s/_____
William E. Senseney

Dismissed per Plea - Grand Larceny
So ordered and entered this 4 day of 4 2006 by
/s/_____
William E. Senseney

Dismissed per Plea - Burglary
So ordered and entered this 4 day of 4 2006 by
/s/_____
William E. Senseney

Dismissed per Plea - Possession of Cocaine
So ordered and entered this 4 day of 4 2006 by
/s/_____
William E. Senseney

Dismissed per Plea - False Info to WVSP
So ordered and entered this 4 day of 4 2006 by
/s/_____
William E. Senseney

Dismissed per Plea - Destruction of Property
So ordered and entered this 4 day of 4 2006 by
/s/_____
William E. Senseney

B

IN THE MAGISTRATE COURT OF JEFFERSON COUNTY, WEST VIRGINIA

State of West Virginia vs. Michael Hutzler

Case No. 05-F-432; 433

05-M-3505; 05-M-3506; 05-M-3507

MOTION TO NOLLE PROSEQUI (DISMISS)

COMES NOW, the State of West Virginia by and through its Assistant Prosecuting Attorney, S. Groh and moves the Court to enter its NOLLE PROSEQUI (that the State will no further prosecute this case) in this matter. The Court after reviewing the Motion hereby GRANTS said Motion. It is therefore ORDERED that this/these matter(s) be/are DISMISSED and the Clerk is to remove this/these matters(s) from the Court Docket. *Per Plea (hand-written)*

Approved By:

/s/_____

Steve Groh

Prosecuting Attorney

WV State Bar #

/s/_____

Harley O. Wagner

Counsel for Defendant

Approved by:

/s/_____

Sheila K. Hollida

Victim

Entered 4 day of 4 2005

/s/_____

William E. Senseney

Magistrate

C

IN THE MAGISTRATE COURT OF JEFFERSON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA V MICHAEL HUTZLER
CRIMINAL CASE NO. 05-M-3503, 3504

GUILTY OR NOT CONTEST PLEA

1. The magistrate has informed me that I am charged with the offense(s) of 1. Dom assault 2. Assault and that the possible penalties are: jail to 6 mo. and/or fine to 500 (state mandatory minimum penalty, if any, and maximum penalty.) I understand the charge(s) and the penalties that the court may impose.

2. The magistrate has informed me that I have the right to be represented by an attorney at every stage of the proceedings and if I cannot afford to hire an attorney and I qualify, one will be appointed to represent me. I understand this right and further understand that if I decide to represent myself I cannot later claim that I was deprived of my right to be represented by an attorney.

DEFENDANT MUST INITIAL THE APPROPRIATE LINE:

_____ (a) I give up my right to have any attorney represent me.

X s/s mh (b) I have an attorney, who is present and is representing me

_____ (c) I want to hire an attorney to represent me

_____ (d) I want an attorney appointed to represent me.

NOTE: If I have initialed (c)) or (d), I request that this plea proceeding be postponed so that I can talk with an attorney and have an attorney representing me for the rest of this proceeding.

3. The magistrate has informed me that I have the right to plead not guilty (or to maintain a plea of not guilty if it has already been made). I understand this right.

4. The magistrate has informed me that I have a right to be tried by a jury or by a magistrate without a jury, and at that trial. I have the right to be represented by an attorney, the right to confront and cross-examine witnesses against me, the right not to be forced to incriminate myself, the right to call witnesses on my own behalf, and the right to testify on my own behalf or to be silent. I understand these rights.

5. The magistrate has informed me, and I understand, that if I plead guilty or no contest I give up my right to a trial.

6. The magistrate has informed me, and I understand, that if I plead guilty or not contest, the court may ask me questions while I am under oath about the offense(s) to which I plead. I further understand that if I answer these questions under oath my answers may later be used against me in a prosecution for false swearing.

7. The magistrate has informed me, and I understand, that the magistrate may neither entertain nor grant a request to withdraw this plea once the magistrate has accepted it.

8. I am entering this plea voluntarily, and not as a result of force or threats or of promises apart from a plea agreement. I have informed the magistrate of any prior discussions between the prosecuting attorney and me or my attorney that led to my willingness to plead guilty or no contest.

9. I plead as follows (initial one)
_____ X /s/MH guilty; _____ no contest

4-4-06
Date

/s/_____
Michael Hutzler
Defendant's Signature

/s/_____
Harley O. Wagner
Counsel's Signature (if applicable)

I have addressed the defendant personally in open court and have informed the defendant of the matters set out above, and find that the defendant understands. I find further that the foregoing waiver of rights and plea are made knowingly and voluntarily by the defendant, and I accept the defendant's plea.

4-4-06

Date

/s/_____

Wm E. Senseney
Magistrate's Signature

D

IN THE MAGISTRATE COURT OF JEFFERSON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
V 05-M-3503,3504
MICHAEL HUTZLER

ORDER OF RESTITUTION

Upon conviction of the defendant, upon motion, and upon hearing, the Court hereby ORDERS as part of its judgment and imposition of sentence that the defendant make restitution

VICTIM Sharla Hollida (hand-written)
ADDRESS P.O. Box 1538
Martinsburg, WV 25402
as follows: $5,000.00 five thousand dollars
or ____ other:_____

The Court further ORDERS that the defendant make restitution in accordance with the following terms and conditions: (hand written) pay to court w/in 90 days of 4-4-06

The Court further ORDERS that the defendant satisfy this judgment of restitution by:

✓ making monetary payment to the court
__ making, on the date of this ORDER, monetary payment directly to the victim named above, in the presence of the undersigned magistrate

__ other:_____

ENTERED THIS 4 DAY OF 4, 06.

/s/_____
William E. Senseney
MAGISTRATE

E

IN THE MAGISTRATE COURT OF JEFFERSON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA VS. MICHAEL S. HUTZLER
CASE NO. 05-M-3503; 3504
MAGISTRATE SENSENEY

PROBATION ORDER

On this 4th day of April, 2006, came the State of West Virginia, the Defendant, in person and by Counsel, Harley O. Wagner, Esquire. Whereupon, in consideration of the argument of Counsel, the position of the State of West Virginia and the facts of this case, it is hereby ADJUDGED and ORDERED that the Defendant is hereby sentenced to a term of incarceration of 1 year in jail.

O days shall be served by confinement in the Eastern Regional Jail.

O days shall be served upon home confinement if approved for same, if not approved, said days of home confinement shall be additional days of incarceration. The remaining 365 days shall be suspended for a term of unsupervised probation which term of probation shall commence upon the completion of any term of incarceration and/or home confinement to which the Defendant may be subject. The probation shall end either after a period of 1 year · 4/4/07 or upon payment of all fines, costs and restitution which may be ordered herein, whichever date is later. Upon probation the Defendant shall strictly comply with the following terms of probation:

THE DEFENDANT SHALL NOT DO ANY OF THE FOLLOWING:

✓ Violate ANY laws

✓Use or possess any narcotics, marijuana, or controlled substance not lawfully prescribed.

✓Have any contact, direct or indirect, with the victim or the victim's family or if the Defendant lawfully resides with the victim, the Defendant shall not abuse the victim

N/A Change place of residence without informing the Court in writing of his new address within 7 days.

THE DEFENDANT SHALL DO THE FOLLOWING:

✓Pay restitution in the amount of $5,000.00 directly to the Court for payment to the victim Sharla Hollida within 90 days (not to exceed 180 days)

✓Pay fines and court costs in the amount of $307.00 directly to the Clerk of this Court within 90 days (not to exceed 180 days).

N/A Perform N/A hours of community service at the direction of the Jefferson County Sheriff's Dept. At such time and manner as shall be directed. Report in person to the Sheriff's Office at 9:00 a.m. the Friday following this order with a copy of this Order.

N/A Attend and fully participate in community based counseling and rehabilitative services with

N/A. The Defendant shall report to the service

provider within 7 days fully attend and pay all costs as directed by same. Failure to report, attend and pay costs to service provider shall constitute a violation of probation.

N/A Additional Specialized Terms:_____

SO ORDERED

/s/_____
WM E. Senseney
MAGISTRATE

By signing this, the Defendant certifies that he/she fully understands the terms and conditions of Probation, can and will abide by the same.
/s/_____
Michael Hutzler
Defendant

/s/_____
Harley O. Wagner
Defense Counsel

/s/_____
Steve Groh
Prosecuting Attorney

/s/ _____
Tpr Glende
Complainant

/s/_____
Sharla Hollida
Victim

F

IN THE MAGISTRATE COURT OF JEFFERSON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA VS. MICHAEL HUTZLER
05-M-3503, 3504 (SENSENEY)

PROBATION DISCHARGE ORDER

This 28th day of March, 2007 came the Defendant by counsel Harley O. Wagner of the Law Office of Mills & Wagner and came Larry Crofford, Assistant Prosecuting Attorney for Jefferson County upon this matter being scheduled for hearing.

WHEREUPON, the Court finds that the Defendant has complied with all the terms of his probation and all conditions set forth at the hearing in this matter on April 4, 2006 wherein the Defendant, per plea agreement with the State of West Virginia, pled guilty to domestic assault (05-M-3503) and assault (05-M-3504) and the charges of burglary (05-F-432), grand larceny (05-F-433), possession (05-M-3505), false information (05-M-3506), and destruction of property (05-M-3507) were dismissed, per said plea with the State.

ACCORDINGLY, it is ADJUDGED and ORDERED that the Defendant has successfully completed his probation, has paid all restitution, and all Court fines and costs have been paid in full.
It is further ADJUDGED and ORDERED that the Defendant's bond be and hereby is exonerated and all matters in said regards now and forever be placed amongst the causes ended.

The Clerk shall enter the foregoing as and for the day and date first hereinabove written, shall strike this case from the Court

Docket and place said file amongst the causes ended and provide attested copies to Steve Groh, Assistant Prosecuting Attorney at P.O. Box 729, Charles Town, WV 25414 and to Harley O. Wagner at 1800 West King Street, Martinsburg, WV 25401

/s/_____
WILLIAM E. SENSENEY
MAGISTRATE WILLIAM SENSENEY
JEFFERSON COUNTY, WEST VIRGINIA

PREPARED BY:

/s/_____
HARLEY O WAGNER, ESQUIRE

SEEN & AGREED TO BY:

/s/_____
LAURENCE R. CROFFORD

G

AFFIDAVIT
STATE OF WEST VIRGINIA:
COUNTY OF BERKELEY, to-wit:
Comes now the undersigned who deposes and states as follows:

(1)My name is Harley O. Wagner, Esquire. I am a partner with Mills & Wagner, PLLC

(2) I represented Michael S. Hutzler in the Magistrate Court of Jefferson County, West Virginia on the following charges:

- Burglary 05-F-432
- Grand Larceny 05-F-433
- Domestic Assault 05-M-3503
- Assault 05-M-3504
- Possession of Cocaine 05-M-3505
- False Information to WVSP 05-M-3506
- Destruction of Property 05-M-3507

(3) On the 4th day of April, 2006, after extensive plea negotiations the parties entered into and Defendant plead pursuant to the following plea agreement. The Assistant Prosecuting Attorney, Steve Groh, alleged victim, Sharla K. Hollida and the arresting officer, Tpr. M.J. Glende were present and were in full agreement with said plea, each signing off accordingly:

- Defendant plead guilty to misdemeanor offenses of Domestic Assault 05-M-3503 and Assault 05-M-3504

- Defendant was sentenced to six months in jail on each charge. Said sentences were to run consecutive and suspended in lieu of six months unsupervised probation per charge for a total of one year unsupervised probation.
- Standard terms and conditions of probation applied with the additional provisions of $5,000.00 restitution to the victim, Sharla K. Hollida to be paid within 90 days and no contact with either alleged victim, Sharla K. Hollida or her boyfriend, Clyde Campbell.
- The remaining charges of Grand Larceny, Burglary, Possession of Cocaine, False Information and Destruction of Property were dismissed by Assistant Prosecuting Attorney, Steve Groh with understood prejudice pursuant to the plea agreement as noted in the case disposition sheets on the right bottom corner Verdict of Plea: "**dismissed per plea**" thus disposing of the case in full.

(4) Through my discussions with the Jefferson County Assistant Prosecuting Attorney, the arresting officer, Tpr. Glende, the Jefferson County Victim's Advocate and the Jefferson County Magistrate, I understood that (1) the plea agreement reached in the Magistrate Court of Jefferson County, West Virginia on April 4, 2007 resolved this matter in its entirety (2) that the offenses set forth therein had been properly filed and fully disposed of in Jefferson County and (3) that the remaining charges of Grand Larceny, Burglary, Possession of Cocaine, False Information and Destruction of Property were dismissed by the Assistant Prosecutor with understood prejudice as a concession to the charges plead to as set forth above in the plea agreement.

(5) On the 28th day of March, 2007, I appeared with Defendant in the Magistrate Court of Jefferson

County on the above referenced plea agreement. Defendant was discharged from probation at said hearing due to his full compliance with the terms set forth therein thus forever placing this case amongst the causes ended.

Further your affiant saith naught.

/s/_____
Harley O. Wagner

Taken, sworn and subscribed to before me this 31st day of May, 2007.

/s/_____
Connie Detrow
Notary Public

My commission expires /s/July 7, 2013
Notary Seal

H

AFFIDAVIT
STATE OF WEST VIRGINIA
COUNTY OF BERKELEY, to-wit:

Comes now the undersigned who deposes and states as follows:

(6) My name is Michael S. Hutzler

(7) I was charged in the Magistrate Court of Jefferson County, West Virginia as follows:

- Burglary 05-F-432
- Grand Larceny 05-F-433
- Domestic Assault 05-M-3503
- Assault 05-M-3504
- Possession of Cocaine 05-M-3505
- False Information to WVSP 05-M-3506
- Destruction of Property 05-M-3507

(8) On the 4th day of April, 2006, after extensive plea negotiations, by my attorney, Harley O. Wagner, I entered into the following plea agreement. I understood that the Assistant Prosecuting Attorney, Steve Groh, alleged victim, Sharla K. Hollida and the arresting officer, Tpr. J.J. Glende were present and were in full agreement with said plea, each signing off accordingly:

- I plead guilty to the misdemeanor offenses of Domestic Assault 05-M-3503 and Assault 05-M-3504

- I was sentenced to six months in jail on each charge. Said sentences were to run consecutive and suspended in lieu of six months unsupervised probation per charge for a total of one year unsupervised probation.
- Standard terms and conditions of probation applied with the additional provisions of $5,000.00 restitution to the victim, Sharla K. Hollida to be paid within 90 days and no contact with either alleged victim, Sharla K. Hollida or her boyfriend Clyde Campbell.
- The remaining charges of Grand Larceny, Burglary, Possession of Cocaine, False Information and Destruction of Property were dismissed by Assistant Prosecuting Attorney, Steve Groh with understood prejudice pursuant to the plea agreement as noted in the case disposition sheets on the right bottom corner Verdict or Plea: "**dismissed per plea**' thus disposing of the case in full.

(9) Through my discussions with my attorney, Harley O. Wagner, I understood that (1) the plea agreement reached in the Magistrate Court of Jefferson County, West Virginia on April 4, 2007 resolved this matter in its entirety (2) that the offenses set forth therein had been properly filed and fully disposed of in Jefferson County and (3) that the remaining charges of Grand Larceny, Burglary, Possession of Cocaine, False Information and Destruction of Property were dismissed by the Assistant Prosecutor with understood prejudice as a concession to the charges plead to as set forth above in the plea agreement.

(10) On the 28th day of March, 2007, I appeared in the Magistrate Court of Jefferson County on the

above referenced plea agreement. I was discharged from probation at said hearing due to being in full compliance with the terms set forth therein and I understood this case was ended.

Further this affiant saith naught.

/s/_____
Michael S. Hutzler

Taken, sworn and subscribed to before me this 6-1-07, 2007.

/s/_____
Connie Detrow
Notary Public

My commission expires: /s/July 7, 2013

Notary Seal

I

State of West Virginia

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 15th day of June 2009, the following order was made and entered:

State of West Virginia, Plaintiff Below,
Appellee

v.) No. 34158

Michael S. Hutzler, Defendant Below,
Appellant

The Court, having maturely considered the record and the oral argument and the briefs of counsel thereon, is of the opinion for reasons stated in writing and filed with the record that there is no error in ruling of the Circuit Court of Berkeley County, rendered on the 17th day of January, 2008. It is therefore considered and ordered by the Court that said ruling be, and it hereby is, affirmed; all of which is ordered to be certified to the Circuit Court of Berkeley County.

The syllabus of points adjudicated, prefixed to the written opinion aforesaid prepared by Chief Justice Benjamin, was concurred in by Justices Davis, Workman, Ketchum and McHugh.

A True Copy

Attest: /s/_____
Rory L. Perry
Clerk, Supreme Court of
Appeals (SEAL)

J

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2009 Term

No. 34158

STATE OF WEST VIRGINIA,
Plaintiff Below, Appellee
v.
MICHAEL S. HUTZLER,
Defendant Below, Appellant

Appeal from the Circuit Court of Berkeley County
The Honorable Gray Silver, III, Judge
Criminal Action No. 07-F-69

AFFIRMED

Submitted: March 10, 2009
Filed: May 14, 2009

Kevin D. Mills, Esq.	Christopher C. Quasebarth, Esq.
Mills & Wagner	Chief Deputy Prosecuting Attorney
Martinsburg, WV	Martinsburg, WV
Attorney for Mike Hutzler	Attorney for the State

CHIEF JUSTICE BENJAMIN delivered the Opinion of the Court.

SYLLABUS BY THE COURT

1. "The Double Jeopardy Clause in Article III, Section 5 of the *West Virginia Constitution*, provides immunity from further prosecution where a court having jurisdiction has acquitted the accused. It protects against a second prosecution for the same offense after conviction. It also prohibits multiple punishments for the same offense." Syllabus Point 1, *Conner v. Griffith*, 160 W.Va. 680, 283 S.E.2d 529 (1977).

2. "The sections of ch. 50 of the Code, relating to the jurisdiction of [magistrates] in criminal cases, deal fully and comprehensively with that subject and are construed and interpreted as having been intended by the legislature to constitute the exclusive rule and law defining such jurisdiction and prescribing the mode of exercise thereof, and to be a substitute for all former statutory or common law pertaining to that subject." Syllabus Point 2, *Ex Parte Philip Gilbert*, 78 W.Va. 658, 90 S.E. 111 (1916).

3. "A duly elected [magistrate] who resides in the district for which he was elected is authorized and empowered to exercise within the county in which such district is located the jurisdiction conferred upon him by the Constitution and the statutes of this State[.]" Syllabus Point 1, in part, *State ex rel. Moats v. Janco, Sheriff*, 154 W.Va. 887, 180 S.E.2d 74 (1971).

4. Pursuant to this State's constitutional and statutory law, a magistrate court does not have jurisdiction to convict or sentence a criminal

defendant for a felony offense or an offense that is not committed in the county in which the magistrate court is established.

5. "In determining what consequences should flow from the State's breach of its duty to preserve evidence, a trial court should consider (1) the degree of negligence or bad faith involved; (2) the importance of the missing evidence considering the probative value and reliability of secondary or substitute evidence that remains available; and (3) the sufficiency of the other evidence produced at the trial to sustain the conviction." Syllabus Point 2, in part, *State v. Osakalumi*, 194 W.Va. 758, 461 S.E.2d 504 (1995).

Benjamin, Chief Justice:

The appellant, Michael S. Hutzler, appeals his conviction of felony destruction of property in the Circuit Court of Berkeley County on the bases that the double jeopardy clauses of the federal and state constitutions bar the conviction and the State wrongfully destroyed evidence. After considering the parties' arguments, the record below, and the applicable law, we find no merit to the appellant's assignments of error. Accordingly, we affirm.

I.

FACTS

The appellant was originally charged in the Magistrate Court of Jefferson County with the misdemeanor offenses of domestic assault, assault, possession of cocaine, knowingly giving false or

misleading information to a member of the West Virginia State Police, destruction of property, and the felony offenses of grand larceny and burglary.

The State alleged below that in the early morning hours of October 16, 2005, the appellant broke and entered the residence of his former girlfriend, Sharla K. Hollida, which is located in Martinsburg in Berkeley County. While at Ms. Hollida's residence, the appellant damaged and stole various items.

The State further alleged that Ms. Hollida returned home and discovered the appellant in the act of burglarizing her home. At that point, Ms. Hollida called her boyfriend John Campbell and the police. She then left to meet Mr. Campbell with whom she returned to her residence to find the appellant still there. The appellant then entered his vehicle and chased Mr. Campbell's vehicle, in which Ms. Hollida was a passenger, into adjoining Jefferson County where the appellant attempted to run Mr. Campbell's vehicle off the road. In Jefferson County, the appellant was stopped by State Trooper M. J. Glende who discovered property belonging to Ms. Hollida in the appellant's vehicle. Upon being questioned about this property, the appellant lied to State Trooper Glende regarding its ownership. Also at this time, State Trooper Glende discovered s small amount of cocaine in the appellant's vehicle. The appellant subsequently admitted his actions in a written statement taken by Trooper Glende which confirmed Ms. Hollida's description of the events.

A preliminary hearing was ultimately held in

the Magistrate Court of Jefferson County on the charges brought against the appellant. At that hearing, the appellant pled guilty to the misdemeanor offenses of domestic assault and assault. He was sentenced to six months of imprisonment on each charge, with each sentence to run consecutively. These sentences were suspended in lieu of six months unsupervised probation per charge for a total of one year unsupervised probation. A condition of probation was that the appellant pay within 90 days $5,000 in restitution to Ms. Hollida. The remaining charges of burglary, grand larceny, destruction of property, possession of cocaine, and false information were dismissed. On the disposition sheets of these charges there are notations that each charge was "dismissed per plea." On March 28, 2007, the Magistrate Court of Jefferson County discharged the appellant from probation due to the successful completion of the terms and conditions of the probation as set forth in the plea agreement.

Meanwhile, in February 2007, the appellant was indicted in Berkeley County for burglary, grand larceny, and felony destruction of property arising from the same events which gave rise to the Jefferson County charges against the appellant. The appellant subsequently filed motions to dismiss these charges based on double jeopardy and the State's destruction of potentially exculpatory blood evidence. With regard to the destruction of evidence, Trooper Glende had destroyed blood evidence taken from M. Hollida's vehicle and residence apparently due to his belief that all of the charges against the appellant had been dismissed per the appellant's plea in the Magistrate Court of Jefferson County. In

support of his motion to dismiss, the appellant provided affidavits from himself and his counsel in which both swore to their understanding that all of the charges had been dismissed with prejudice by the magistrate court as part of the appellant's plea. The State responded to the motion to dismiss arguing that the Magistrate Court of Jefferson County never had jurisdiction over the burglary, grand larceny, and destruction of property charges, and that the charges were dismissed for lack of jurisdiction rather than pursuant to the plea agreement. In support of its response, the State included the affidavit of the Assistant Prosecuting Attorney of Jefferson County in which he swore that he only learned that Jefferson County lacked jurisdiction on the day of the plea hearing at which time he informed the appellant and his counsel that the charges were being dismissed because of a lack of jurisdiction.

By order dated August 31, 2007, the Berkeley County Circuit Court denied the appellant's motion to dismiss the State's prosecution of him in that court. With regard to the appellant's double jeopardy claim, the court found that the burglary, grand larceny, and destruction of property charges all occurred in Berkeley County, and therefore the Magistrate Court of Jefferson County never had jurisdiction of these charges. Because the Magistrate Court of Jefferson County lacked jurisdiction, the appellant had never been placed in jeopardy for these charges in the magistrate court. With regard to the destruction of evidence claim, the court found that the effect of the destroyed evidence was minimal because of the substantial amount of additional evidence that existed against the

appellant.

Thereafter, the appellant pled guilty in the Circuit Court of Berkeley County to felony destruction of property. The court sentenced the appellant to not less than one year nor more than ten years, but suspended the sentence in lieu of three years of probation.
Significantly, this was a conditional plea pursuant to West Virginia Rule of Criminal Procedure 11(a)(2) (See footnote1) wherein the appellant was permitted to preserve his double jeopardy and destruction of evidence claims for appeal to this Court.
Accordingly, if the appellant were to prevail on appeal, he would be allowed to withdraw his plea.

By order of June 11, 2008, this Court granted the appellant's petition for appeal. We now proceed to consider the appellant's assignments of error.

II.

STANDARD OF REVIEW

We are first asked to review whether the circuit court properly ruled that double jeopardy does not bar the appellant's prosecution in the Circuit Court of Berkeley County. This Court has held that "a double jeopardy claim [is] reviewed *de novo*." Syllabus Point 1, in part, *State v. Sears*, 196 W.Va. 71, 468 S.E.2d 324 (1996). Second, we are asked to review whether the circuit court properly ruled that the State's destruction of evidence does not mandate the dismissal of the charges against the appellant. Concerning this matter, "[t]his Court reviews the circuit court's final order and ultimate

disposition under an abuse of discretion standard. We review challenges of findings of fact under a clearly erroneous standard; conclusions of law are reviewed *de novo*." Syllabus Point 4, *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996). With these standards to guide us, we proceed to consider the issues herein.

III

DISCUSSION

1. Double Jeopardy

The first assignment of error asserted by the appellant is that the Circuit Court of Berkeley County erred in finding that the appellant's prosecution in that court is not barred by the double jeopardy clause.

The Fifth Amendment to the United States Constitution provides that "No person shall be ... subject for the same offense to be twice put in jeopardy of life or limb." Likewise, the Constitution of West Virginia, Art. III, Sec. 5 mandates that "No person shall be ... twice put in jeopardy of life or liberty for the same offense." This Court has recognized that

The Double Jeopardy Clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding. This is central to the objective of the prohibition against successive trials. The Clause does not allow the State ... to make repeated attempts to convict an

individual for an alleged offense, since [t]he constitutional prohibition against double jeopardy was designed to protect an individual from being subjected to the hazards of trial and possible conviction more than once for an alleged offense.

State v. Fraizier, 162 W.Va. 602, 622-623, 252 S.E.2d 39, 50-51 (1979), *quoting Burks v. United States*. 437 U.S. 1, 11, 98 S.Ct. 2141, 2147, 57 L.Ed.2d 1, 9-10 (1978) (internal quotation marks and citations omitted) (ellipsis in original). We previously explained in *Brooks v. Boles*, 151 W.Va. 576, 153 S.E.2d 526 (1967), that "[o]ne is in jeopardy when he has been placed on trial on a valid indictment, before a court of competent jurisdiction, has been arraigned, has pleaded and a jury has been empaneled and sworn. He is then in danger of conviction and punishment." 151 W.Va. at 583,k 153 S.E.2d at 530 (citation omitted). Finally, this Court held in Syllabus Point 1 of *Conner v. Griffith*, 160 W.Va. 680, 283 S.E.2d 529 (1977), that "[t]he Double Jeopardy Clause in Article III, Section 5 of the *West Virginia Constitution,* provides immunity from further prosecution where a court having jurisdiction has acquitted the accused. It protects against a second prosecution for the same offense after conviction. It also prohibits multiple punishments for the same offense."

It is the appellant's position that the Magistrate Court of Jefferson County had jurisdiction of the charges against him for burglary, grand larceny, and destruction of property, and in exchange for the appellant's plea of guilty to domestic assault and assault, the Magistrate Court dismissed with prejudice the burglary, grand

larceny, and destruction of property charges. The appellant thus concludes that having been put in jeopardy for the offenses of burglary, grand larceny, and destruction of property in the Magistrate Court of Jefferson County, he is now immune from further prosecution for these same charges in the Circuit Court of Berkeley County.

As set forth above, the double jeopardy clauses provides immunity from further prosecution where a court having jurisdiction has acquitted the accused. The double jeopardy issue in this case rests on whether the Magistrate Court of Jefferson County had jurisdiction of the burglary, grand larceny, and destruction of property charges against the appellant. If the magistrate court had jurisdiction, the double jeopardy clause bars further prosecution of the appellant for these same offenses. Conversely, if the magistrate court did not have jurisdiction of these offenses, there is no double jeopardy bar to the prosecution of the appellant for these offenses in the Circuit Court of Berkeley County.

In regard to the jurisdiction of magistrate courts, this Court had indicated that

The sections of ch. 50 of the Code, relating to the jurisdiction of [magistrates] in criminal cases, deal fully and comprehensively with that subject and are construed and interpreted as having been intended by the legislature to constitute the exclusive rule and law defining such jurisdiction and prescribing the mode of exercise thereof, and to be a substitute for all former statutory or common law pertaining to that subject.

Syllabus Point 2, *Ex Parte Philip Gilbert*, 78 W.Va. 658, 90 S.E. 111 (1916) (footnote added). (See footnote 2) *See also State v. McKain*, 56 W.Va. 128, 49 S.E.20 (1904) (stating that ""[t]he jurisdiction of]magistrates] is conferred by statute. They can lawfully exercise none not so granted. They have no common-law powers."). In addition, we have held that "[a] duly elected [magistrate] who resides in the district for which he was elected is authorized and empowered to exercise within the county in which such district is located the jurisdiction conferred upon him by the Constitution and the statues of this State[.]" Syllabus Point 1, in part, *see State ex rel. Moats v. Janco, Sheriff*,154 W.Va. 887, 180 S.E.2d 74 (1971). (See footnote 3) It is clear then that the jurisdiction of magistrate courts is conferred entirely by the Constitution and by statute.

The jurisdiction of magistrate courts is conferred in our State Constitution at Art. VIII §10. Specifically, this section provides in relevant part:

The jurisdiction of a magistrate court shall extend throughout the county for which it is established, shall be uniform for all counties of the State and shall be subject to such regulations as to venue of actions and the counties in which process may be executed or served on parties or witnesses as may be prescribed by law. The times and places for holding such courts shall be designated or determined in such manner as shall be prescribed by law.

Magistrate courts shall have such original jurisdiction in criminal matters as may be prescribed by law, but *no person shall be convicted or sentenced*

for a felony in such courts. (Emphasis added).

The criminal jurisdiction of magistrate courts is also prescribed in W.Va. Code §50-2-3 (1993), and provides, in applicable part, that "{magistrate courts shall have jurisdiction of all misdemeanor offenses committed in the county[.]" Therefore, we now hold that pursuant to this State's constitutional and statutory law, a magistrate court does not have jurisdiction to convict or sentence a criminal defendant for a felony offense or an offense that is not committed in the county in which the magistrate court is established. *See Golden v. Board of Ed., Harrison County,* 169 W.Va. 63, 285 S.E. 2d 665 (1981) (finding that magistrate did not have jurisdiction to enter order showing that defendant was guilty of misdemeanor upon *nolo contendere* plea to felony charge); (See footnote 4) *Guthrie v. Boles*, 261 F. Supp. 852, 856 (N.D.W.Va., 1967) (recognizing that "[i]t is equally as clear that a [magistrate] does not have the authority to accept a plea in a felony case.").

In the instant case, the Magistrate Court of Jefferson County clearly did not have jurisdiction of the burglary and grand larceny offenses because these offenses are felonies. Because the magistrate court did not have jurisdiction of thee felony offenses, the appellant was never in jeopardy for these offenses in the Magistrate Court of Jefferson County. Therefore, we find that the double jeopardy clause did not bar the appellant's subsequent indictment for the felony offenses of burglary and grand larceny in the Circuit Court of Berkeley County.

In regarding to the misdemeanor destruction of property charge in the Magistrate Court of Jefferson County, it is the appellant's position that the magistrate court had jurisdiction of the misdemeanor destruction of property offense because a substantial element of the offense allegedly was committed in Jefferson County. The appellant relies on W.Va. Code §61-11-2 (1969), which provides that

> When an offense is committed partly in one county and partly in one or more other counties within this State, it may be alleged that the offense was committed and the accused may be tried in any one county in which any substantial element of the offense occurred.

Specifically, the appellant argues that the State included the victim's property found in the appellant's truck in Jefferson county in determining the total value of the destroyed property for the purpose of charging the appellant with destruction of property in the Magistrate Court of Jefferson County. According to the appellant, a substantial element of misdemeanor destruction of property is the carrying away of property. The appellant concludes that because he allegedly carried away the victim's property to Jefferson county, a substantial element of the offense of misdemeanor destruction of property occurred in Jefferson County, making venue in that county permissible., We find absolutely no merit to this argument. (See footnote 5)

The elements of the offense of misdemeanor destruction of property are found in W.Va. Code §61-3-30(a) (2004), which provides in part that "[i]f any person unlawfully, but not feloniously, takes and

carries away, or destroys, injuries or defaces any property, real or personal, of another, he or she is guilty of a misdemeanor." (See footnote 6) It is clear to this Court that all of the elements of the alleged offense of destruction of property occurred at the victim's residence in Berkeley County. It was at the victim's residence that the appellant took and carried away, destroyed, injured, or defaced the victim's property. We find therefore that the Magistrate Court of Jefferson County did not have jurisdiction of the offense of misdemeanor destruction of property as alleged by the State because all of the substantial elements of the offense occurred in Berkeley County.

In sum, having determined that the Magistrate Court of Jefferson County did not have jurisdiction of the offenses of burglary, grand larceny, and destruction of property with which the appellant was charged, we find that the appellant was never in jeopardy for these offense in the Magistrate Court of Jefferson County. Accordingly, double jeopardy did not bar the subsequent prosecution of the appellant for these offenses in the Circuit Court of Berkeley County. (See footnote 7)

2. Destruction of Evidence

The second assignment of error raised by the appellant is that the Circuit Court of Berkeley County erred in failing to dismiss the indictment against the appellant in light of the State's destruction of potentially exculpatory evidence.

As noted above, Trooper Glende destroyed blood evidence taken from the victim's vehicle and residence apparently due to his belief that all of the charges against the appellant had been dismissed with prejudice per the appellant's plea in the Magistrate Court of Jefferson County. The Circuit Court of Berkeley County found that the effect of the destroyed evidence was minimal because of the substantial amount of additional evidence that exists against the appellant. In challenging the circuit court's ruling, the appellant now argues that because the blood evidence would conclusively prove the appellant's guilt or innocence of the offenses charged, the evidence's destruction has deprived the appellant of his best defense. Therefore, concludes the appellant, to permit the State to prosecute the appellant is fundamentally unfair. We reject the appellant's argument.

It is not disputed that the State destroyed evidence that would have ben admissible at trial and that the State had a duty to preserve. The issue, rather, is what consequences should flow from the State's action. In Syllabus Point 2, in part, of *State v. Osakalumi,* 194 W.Va. 758, 461 S.E.2d 504 (1995), this Court held, in part, that

In determining what consequences should flow from the State's breach of its duty to preserve evidence, a trial court should consider (1) the degree of negligence or bad faith involved; (2) the importance of the missing evidence considering the probative value and reliability of secondary or substitute evidence that remains available; and (3) the sufficiency of the other evidence produced at the trial to sustain the conviction.

The first factor to be considered under the *Osakalumi* test is "the degree of negligence or bad faith involved." The appellant acknowledges in his brief that Trooper Glende destroyed the evidence under a good faith belief that the appellant's plea in magistrate court had resolved the entire case. The second factor to be considered is "the importance of the missing evidence considering the probative value and reliability of secondary or substitute evidence that remains available. With regard to substitute evidence, there are two witnesses who can place the appellant at the scene of the offenses, one of whom is the appellant's former girlfriend. In addition, the appellant was apprehended by the State Police in Jefferson County and found to be in possession of property taken from the scene of the alleged offenses. Furthermore, the appellant admitted in a written statement taken by Trooper Glende that he broke into the victim's home and took some of her property. He also admitted to chasing Mr. Campbell's vehicle in his own vehicle. Finally, the third factor is the sufficiency of this other evidence to sustain a conviction. As set forth above, there is doubtless sufficient secondary evidence against the appellant to sustain a conviction.

Based on the fact that the evidence at issue was not destroyed in bad faith, the limited importance of the destroyed evidence in light of the substantial probative value and reliability of the remaining evidence, and the fact that there is clearly sufficient evidence to sustain the appellant's convictions of the alleged offenses, we find no error in the circuit court's denial of the appellant's motion to dismiss the charges against the appellant on the basis of the destroyed evidence.

III.

CONCLUSION

Having concluded that the appellant's prosecution in the Circuit Court of Berkeley County for burglary, grand larceny, and destruction of property was not barred by the double jeopardy clause and should not have been dismissed as a result of the State's destruction of evidence, we affirm the January 6, 2008 order of the circuit court adjudging the appellant guilty of felony destruction of property and sentencing him to three years of probation.

Affirmed

Footnote: 1

West Virginia Rules of Criminal Procedure 11(a)(2) provides that

> With the approval of the court and the consent of the state, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pretrial motion. A defendant who prevails on appeal shall be allowed to withdraw the plea.

Footnote: 2

The syllabus in *Gilbert* originally referred to "justice of the peace" instead of "magistrate". Article VIII, §15 of the Judicial Reorganization Amendment of 1974 abolished the office of justice of the peace effective January 1, 1977. Although *Gilbert* was

decided prior to the Judicial Reorganization Amendment, the operative principle articulated in Syllabus Point 1 and quoted above remains valid.

Footnote: 3

See n.3, *supra*

Footnote: 4

In *Golden*, the Court indicated that the magistrate's lawful authority in that case, upon a finding of probable cause on the felony charge, was to bind the case over to the circuit court grand jury.

Footnote: 5

The appellant makes the same argument regarding the offenses of burglary and grand larceny. Because we determine that the magistrate court did not have jurisdiction of these offenses based on the fact that these offenses are felonies, we need not address this argument.

Footnote: 6

West Virginia Code §61-3-30(b) provides for the offense of felony destruction of property. According to this code section,

> Any person who unlawfully, willfully and intentionally destroys, injuries or defaces the real or personal property of one or more other persons or entities during the same act, series of acts or course of conduct causing a loss in the value of the property in an amount of two thousand five hundred dollars or more, is guilty of the felony offense of destruction of property, and upon conviction thereof, shall be fined not more than two thousand five hundred dollars of imprisoned in the state correctional facility for not less than one year nor more than ten years,

or in the discretion of the court, confined in the county or regional jail not more than one year, or both fined and imprisoned.

Footnote: 7

In support of the appellant's position that the double jeopardy clause bars his prosecution in the Circuit Court of Berkeley County, the appellant claims that the circuit court confused the issues of venue and jurisdiction in rendering its decision. The appellant also asserts that the circuit court clearly erred in making the factual determination, based on the evidence, that the offenses of burglary, grand larceny, and destruction of pro9perty were dismissed for lack of jurisdiction instead of per the plea agreement in the Magistrate Court of Jefferson County. Because we conclude that the magistrate court did not have jurisdiction of the offenses of burglary, grand larceny, and destruction of property as a matter of law, we do not find it necessary to consider these specific arguments.